

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5183 of 1990

with

SPECIAL CIVIL APPLICATION No 5767 of 1990

with

SPECIAL CIVIL APPLICATION No. 7011 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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HEIR OF MAGANBHAI J PATEL, KUVARBEN M PATEL

Versus

HASMUKHBHAI G PATEL

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Appearance:

1. Special Civil Application No. 5183 of 1990  
MR KV SHELAT for Petitioners  
MR AJ PATEL for Respondent No. 1  
MS BR GAJJAR, AGP for Respondent No. 3
2. Special Civil ApplicationNo 5767 of 1990  
MR AJ PATEL for Petitioners

MS BR GAJJAR AGP for Respondent No. 1

MR KV SHELAT for Respondent No. 2

NOTICE SERVED for Respondent No. 3

3. Special Civil Application No. 7011 of 1990

MR AJ PATEL for Petitioners

MS BR GAJJAR AGP for Respondent No. 1

MR KV SHELAT for Respondent No. 2

NOTICE SERVED for Respondent No. 3

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CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 25/04/2000

COMMON ORAL JUDGEMENT

With the consent of all the parties, and as the common questions of facts and law involved in these three petitions, they are being disposed of by this common judgment.

Special Civil Application No. 5183 of 1990 has been filed by original owner of the disputed land and Special Civil Application No. 5767 of 1990 and Special Civil Application No. 7011 of 1990 filed by the purchaser of the disputed land. In a present case, the land pertains to Block No. 335. This land was consolidated under the provisions of Bombay Prevention of Fragmentations & Consolidation of Holdings Act, 1947 by allotting revenue Plot Nos. 238 and 263 and after consolidation, the land has been recorded in Block No.335. After consolidation of the land, it was recorded in the name of original owner Maganbhai Joitaram Patel. Special Civil Application No. 5183 of 1990 has been filed by the legal heirs of said Maganbhai Joitaram Patel. It is admitted by learned counsel of the parties that provisions of Bombay Prevention of Fragmentations and Consolidation of Holdings Act, 1947 will apply in respect of Block No.335. Original owner Maganbhai Joitaram Patel transferred a part of the land of Block No.335 admeasuring 18,900 Sq.Mts. in favour of Ibrahimbhai Usmanbhai by registered sale deed dt. 10th April, 1980. Subsequently on 6/7/1981, original owner Maganbhai Joitaram Patel transferred the remaining part of Block No. 335 admeasuring 6,095 sq.mts. by registered deed of sale dt. 6th July, 1981 in favour of one Hasmukhbhai Govindbhai Patel and Savitaben Govindbhai Patel -the petitioners of Special Civil Application Nos. 5767 of 1990 and 7011 of 1990. It is not in dispute that both the transfers were made by the original owner

Maganbhai Joitaram Patel in favour of Ibrahim Usamanbhai and the present petitioners without obtaining permission as required under the Bombay Prevention of Fragmentations and Consolidation of Holdings Act, 1947. However in the case of transfer of Ibrahim Usaman, the Government did not take any action even though the land was transferred without obtaining permission from the authority. A decision in the matter of transfer of Ibrahim Usmanbhai was taken by the Government by an order dt. 24th April, 1990. The said order has been passed by the Additional Chief Secretary (Appeal), Revenue Department, Government of Gujarat, Ahmedabad in Revision Case No. 3 of 1987.

Mr. A.J.Patel, learned Senior Counsel appearing on behalf of the petitioners of Special Civil Application Nos. 5767 of 1990 and 7011 of 1990 submitted that the Government has taken different steps in the matter of not obtaining permission for the purchase of land pertaining to Block No. 335. It is submitted by Mr. Patel, learned Senior Counsel that in case of the transfer to Ibrahim Usmanbhai, the Government has taken the decision by an order dt. 21st March, 1998. That even though the permission was not obtained by the original owner Maganbhai Joitaram Patel, the transfer of a part of the Block No.335 in favour of Ibrahim Usmanbhai did not contravene the provisions of the Bombay Prevention of Fragmentations and Consolidation of Holdings Act, 1947 and thereby the Government has accepted the transfer as a legal transfer in favour of Ibrahim Usmanbhai. Mr.A.J.Patel, learned Senior Counsel appearing on behalf of the petitioners submitted that the Government should have considered the subsequent events that has taken place after purchase of the remaining area of Block No.335 by the petitioners. It is submitted by Mr. Patel that the petitioners purchased the land by a registered sale deed dt. 6th July, 1981 and thereafter submitted an application for granting permission to use the land for non-agricultural purpose and the Government has considered the application of the petitioner and has granted N.A. permission to the petitioner by an order dt. 3rd August, 1982. It is also submitted by Mr. Patel, learned Senior Counsel that after obtaining the permission, the Government did not interfere with the order for more than seven years. It is an admitted fact that the land belongs to Shela, Tal. Sanand, Dist. Ahmedabad, and the Government declared that there will be a fragmentation in case of land which is less than two acres. In the present case, the land transferred to the petitioner or to Ibrahim Usmanbhai is more than two acres, and therefore, there is no question of

fragmentation of the land in question. The only question that has been raised in the present case is that if prior permission was not obtained for sale of the land to the petitioner, then such a transaction, even if it is illegal, can be validated by giving subsequent permission by the competent authority. It is submitted by Mr. Patel that in the case of Ibrahim Usambhai, the transfer has been regularized by the Government even though no permission was obtained by the original owner for transferring the land to Ibrahim Usambhai. Mr. Patel, learned Senior Counsel appearing on behalf of the petitioner submitted that the transfer of the present land in favour of the petitioners of Special Civil Application No. 5767 of 1990 and 7011 of 1990 is also without any prior permission, but since the Government has recognized the transfer by granting permission for non-agricultural use of the land and inaction or non-action on the part of the Government for a long period has the effect of validating the transfer in favour of the petitioner. Mr. Patel, learned counsel for the petitioners, also submitted that in the light of the decision rendered by the Additional Chief Secretary (Appeal) in Revision Case No.23 of 1987 on 30th August, 1990, and having regard to the subsequent events in the case of petitioner i.e. granting of N.A.permission and also not taking any step by Government in respect of transfer of the land in favour of the petitioner for a long period, the matter requires re-examination by the Appellate Authority. It is also contended by Mr. Patel that after granting N.A.permission, the Government did not take any step for eight years and further the present disputed land which is purchased by the petitioner is within the proposed residential zone and N.A. permissions were granted to the petitioner for construction of the residence in disputed land. It is also submitted by Mr. Patel that having regard to all these subsequent events and developments, it is necessary for the Appellate Authority to reconsider the decision in Revision Case No.3/87 dt. 24th April, 1990 which has been disposed of by the Additional Chief Secretary (Appeal) and the decision taken by him in Revision Case No.23/87 dt. 30th August, 1990. The heirs of original owner of the land who filed Special Civil Application No. 5183 of 1990, are also aggrieved with the order passed by the Additional Chief Secretary (Appeal) in Revision Case No.3/87 dt. 20th April, 1990 to the extent that the learned Additional Chief Secretary should not have passed order for forfeiture of the disputed land to the Government.

Mr. K.V.Shelat, learned counsel appearing on

behalf of the petitioner who filed Special Civil Application No. 5183 of 1990 submitted that the Deputy Collector has rightly decided to hand over the possession of the land to the original owner, but the learned Additional Chief Secretary has erroneously passed the order forfeiting the land to the Government. Mr. Shelat also contended that the scheme of the Act contemplates that wherever any transaction is held to be invalid or void, in that case the possession should be restored to the original owner, and therefore, the order of the learned Additional Chief Secretary passed in Revision Case No.3 of 1987 dt. 20th April, 1990 is illegal and erroneous and should be set aside.

As regards merits of the matters, Mr. Shelat learned counsel submitted that the transfer of the land in favour of the petitioners has been made without obtaining prior permission by the original owner, and therefore, the transaction becomes void and that has to be restored to the original owner. As regards N.A. permission, Mr. Shelat submitted that since the transfer has become void and invalid, the N.A.permission cannot have any force. Mr. Shelat has also submitted that the possession of the disputed land which has been transferred to the petitioner has been restored to the heirs of the original owner. This has been objected to by Mr. A.J.Patel, learned counsel appearing on behalf of the petitioners of other two special civil applications, and Mr. Patel submitted that a civil suit was filed and in pursuance of the interim order, the possession is still with the purchasers. I do not like to express any opinion regarding possession of the land by the parties and this question will be decided by the competent court or revenue authorities.

I have also heard Ms. B.R.Gajjar, learned Assistant Government Pleader appearing on behalf of the State -respondents. Learned Assistant Government Pleader however tried to defend the order of the Additional Chief Secretary by submitting that there is no illegality in the order passed by the Additional Chief Secretary, and since the transfer has been made without obtaining prior permission, the transaction is invalid and void and land can be restored either to the original owner or it may be forfeited to the Government.

However, ultimately, it has been decided by the learned counsel of all the parties that in view of the subsequent events and developments that has taken place, it is necessary to send back the case to the learned Additional Chief Secretary (Appeal) for a fresh decision

and also to consider the question regarding forfeiture of the disputed land to the Government. After considering the submission of learned counsel of all the parties, and in view of the fact that learned counsel of the parties agreed for remanding the case to the learned Additional Chief Secretary for a fresh decision, I am of the opinion that the order of the learned Additional Chief Secretary suffers from some infirmities which require re-examination and accordingly, it is required to be quashed. Accordingly, the order of the learned Additional Chief Secretary (Appeal) passed in both Revision Case Nos. 3 of 1987 and 23 of 1987 are hereby quashed. The cases are remanded to the learned Additional Chief Secretary (Appeal), Revenue Department, Government of Gujarat, Multi-Storeyed Building, Ahmedabad for a fresh decision. the learned Additional Chief Secretary (Appeal) shall issue notice to all the parties and allow them to adduce both oral as well as documentary and after hearing the parties, dispose of both the revision applications in accordance with law within a period of six months from the date of receipt of this order.

With the aforesaid observations and directions, all the writ petitions i.e. Special Civil Application Nos. 5183 of 1990, 5767 of 1990 and 7011 of 1990 are accordingly disposed of. In the facts and circumstances of the case, there shall be no order as to costs.

Date: 25/4/2000. (P.K.SARKAR, J.)

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